SUPREME COURT, U. S.

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No. 325

In the Supreme Court of the United States

OCTOBER TERM, 1969

RAYMOND FRANCO, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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OPINION BELOW

The opinion of the court of appeals (Pet. App. A1) is not yet reported.

JURISDICTION

The judgment of the court of appeals was entered on June 16, 1969. The petition for a writ of certiorari was filed on July 10, 1969. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether a travelers cheque which had been stolen in blank and thereafter signed and countersigned by

a purported purchaser is a falsely made or forged security within the meaning of 18 U.S.C. 2314.

STATEMENT

On October 17, 1968, after a non-jury trial in the United States District Court for the Middle District of Florida, petitioner was convicted on all counts of a five-count indictment charging interstate transportation of falsely made or forged securities, in violation of 18 U.S.C. 2314. He was sentenced to imprisonment for two and one half years on each count, the sentences to run concurrently. The court of appeals affirmed *per curiam* (Pet. App. A3).

The evidence showed that the American Bank Note Company, which prints American Express Traveler's Cheques (Tr. [illegible]), prepared for overseas shipment two wooden cases containing 42,000 blank American Express Traveler's Cheques having a face value of $620,000 (Tr. 19–25). The cases were stolen from a loading dock in New York City (Tr. 42–48).

About four weeks later, as payment for a purchase at an Oldsmobile agency in Florida, petitioner gave five American Express Traveler's Cheques, the numbers of which corresponded with those included in the stolen shipment (Tr. 69–70). When used as payment, each of the five $10 traveler's cheques was complete on its face, bearing the name and signature of one Victor Duarte as the purchaser and countersigner.[1]

[1] There was testimony to the effect that petitioner was known by an employee of the automobile agency as "Sam" (Tr. 103), and identified himself to the salesman as "Ray Imbrau" (Tr. 95).

The checks were forwarded to the American Express Company offices in New York City and were honored by the company.

ARGUMENT

1. Petitioner contends that the traveler's cheques involved in this case were not "falsely made and forged securities" within the meaning of 18 U.S.C. 2314, arguing that the facts show only a forged endorsement, and not forged making. He relies on *Streett* v. *United States*, 331 F. 2d 151 (C.A. 8), where the court held that Section 2314 does not reach the transportation of validly issued traveler's cheques on which only the countersignature of the payee is forged. Whatever the validity of *Streett*,[2] it does not apply to this case where the traveler's cheques were never validly issued. As to the situation here—where the cheques were blank when stolen and both the signature and countersignature were forged—the completed instrument was a falsely made and forged security within the purview of Section 2314. As stated in *United States* v. *Petti*, 168 F. 2d 221, 223 (C.A. 2):

> * * * The statute [National Stolen Property Act—18 U.S.C. 2314] expressly includes any "traveler's check," and in our opinion this should be construed to cover such a check before as well as after its issuance to a purchaser. The purpose of the statute is to discourage the theft of evidences of indebtedness which may be made vehicles of fraud. A traveler's check

[2] See *United States* v. *Di Pietto*, 396 F. 2d 283, 286 (C.A. 7), certiorari denied on this issue, 394 U.S. 310, where the validity of *Streett* is questioned.

> is intended to be akin to currency as a circulating medium and to be accepted from anyone tendering it without further identification than the identity of the signature and countersignature. See *Peoples Savings Bank* v. *American Surety Co.*, D.C.W.D. Mich., 15 F. Supp. 911, 913. If both are blank, the thief can use the check to commit fraud even more easily than when forgery of the countersignature is required to make the document usable. In our opinion, therefore, the checks in question were "securities" within the meaning of the statute. * * *

See *Berry* v. *United States*, 271 F. 2d 775, 777 (C.A. 5), certiorari denied, 362 U.S. 903. See also, as to blank American Express money orders filled in with fictitious names as sender and payee, *Castle* v. *United States*, 287 F. 2d 657 (C.A. 5), vacated and remanded on other grounds, 368 U.S. 13; *United States* v. *Di Pietto*, 396 F. 2d 283, 286 (C.A. 7), certiorari denied on this issue, 394 U.S. 310.

CONCLUSION

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

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